

SANTA CLARA COUNTY

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

May 2008



JOHN CHIANG
California State Controller

May 14, 2008

John V. Guthrie
Director of Finance
Santa Clara County
East Wing, 2nd Floor
70 West Hedding Street
San Jose, CA 95110

Dear Mr. Guthrie:

The State Controller's Office audited the costs claimed by Santa Clara County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable. The unallowable costs resulted primarily from the county claiming ineligible costs. The State paid the county \$227,693. The amount paid exceeds allowable costs claimed by \$5,607.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Ram Venkatesan, SB 90 Coordinator
Santa Clara County Controller-Treasurer Department
Alan Minato, Fiscal Officer
Santa Clara County Sheriff's Department
Jessie Fuentes, Fiscal Officer
Santa Clara County Probation Department
George Dooley, Administrative Services Manager
Santa Clara County District Attorney's Office
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Carla Castaneda
Principal Program Budget Analyst
Department of Finance
Paula Higashi, Executive Director
Commission on State Mandates

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Audit Report

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Santa Clara County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable. The unallowable costs resulted primarily from the county claiming ineligible costs. The State paid the county \$227,693. The amount paid exceeds allowable costs claimed by \$5,607.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990, added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR), was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal,

Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Santa Clara County claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payments to the county. Our audit disclosed that \$47,561 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$47,561, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payments to the county. Our audit disclosed that \$112,228 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$112,228, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the county \$227,693. Our audit disclosed that \$62,297 is allowable. The State will offset \$165,396 from other mandated program payments due to the county. Alternatively, the county may remit this amount to the State.

**Views of
Responsible
Official**

We issued a draft audit report on January 23, 2008. Irene Lui, Divisional Manager, responded by letter dated March 11, 2008 (Attachment), disagreeing with the audit results for Findings 1, 2, and 5 and agreeing with the audit results for Findings 3 and 4. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Santa Clara County, The California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

May 14, 2008

Schedule 1— Summary of Program Costs July 1, 2003, through June 30, 2006

| <u>Cost Elements</u> | <u>Actual Costs Claimed</u> | <u>Allowable per Audit</u> | <u>Audit Adjustment</u> | <u>Reference ¹</u> |
|--|---------------------------------|--------------------------------|-----------------------------|-------------------------------|
| <u>July 1, 2003, through June 30, 2004</u> | | | | |
| Salaries | \$ 91,196 | \$ 26,890 | \$ (64,306) | Finding 1, 2 |
| Benefits | 27,816 | 8,441 | (19,375) | Finding 1, 2 |
| Total direct costs | 119,012 | 35,331 | (83,681) | |
| Indirect costs | 48,410 | 13,230 | (35,180) | Finding 1, 2, 4 |
| Total direct and indirect costs | 167,422 | 48,561 | (118,861) | |
| Less late filing penalty | (1,000) | (1,000) | — | |
| Total program costs | <u>\$ 166,422</u> | 47,561 | <u>\$ (118,861)</u> | |
| Less amount paid by the State | | — | | |
| Allowable costs claimed in excess of (less than) amount paid | | <u>\$ 47,561</u> | | |
| <u>July 1, 2004, through June 30, 2005</u> | | | | |
| Salaries | \$ 125,091 | \$ 49,340 | \$ (75,751) | Finding 1, 2 |
| Benefits | 37,276 | 14,759 | (22,517) | Finding 1, 2, 3 |
| Services and supplies | 1,991 | 1,991 | — | |
| Travel and training | 3,299 | 1,778 | (1,521) | Finding 5 |
| Total direct costs | 167,657 | 67,868 | (99,789) | |
| Indirect costs | 103,117 | 44,360 | (58,757) | Finding 1, 2, 3 |
| Total program costs | <u>\$ 270,774</u> | 112,228 | <u>\$ (158,546)</u> | |
| Less amount paid by the State | | — | | |
| Allowable costs claimed in excess of (less than) amount paid | | <u>\$ 112,228</u> | | |
| <u>July 1, 2005, through June 30, 2006</u> | | | | |
| Salaries | \$ 140,795 | \$ 28,671 | \$ (112,124) | Finding 1, 2 |
| Benefits | 51,201 | 9,894 | (41,307) | Finding 1, 2 |
| Total direct costs | 191,996 | 38,565 | (153,431) | |
| Indirect costs | 119,696 | 23,732 | (95,964) | Finding 1, 2 |
| Total program costs | <u>\$ 311,692</u> | 62,297 | <u>\$ (249,395)</u> | |
| Less amount paid by the State | | (227,693) | | |
| Allowable costs claimed in excess of (less than) amount paid | | <u>\$ (165,396)</u> | | |

Schedule 1 (continued)

| Cost Elements | Actual Costs Claimed | Allowable per Audit | Audit Adjustment | Reference ¹ |
|--|-------------------------|------------------------|---------------------|------------------------|
| <u>Summary: July 1, 2002, through June 30, 2005</u> | | | | |
| Salaries | \$ 357,082 | \$ 104,901 | \$ (252,181) | |
| Benefits | 116,293 | 33,094 | (83,199) | |
| Services and supplies | 1,991 | 1,991 | — | |
| Travel and training | 3,299 | 1,778 | (1,521) | |
| Total direct costs | 478,665 | 141,764 | (336,901) | |
| Indirect costs | 271,223 | 81,322 | (189,901) | |
| Total direct and indirect costs | 749,888 | 223,086 | (526,802) | |
| Less late filing penalty | (1,000) | (1,000) | — | |
| Total program costs | <u>\$ 748,888</u> | 222,086 | <u>\$ (526,802)</u> | |
| Less amount paid by the State | | <u>(227,693)</u> | | |
| Allowable costs claimed in excess of (less than) amount paid | | <u>\$ (5,607)</u> | | |
| <u>Summary by Cost Component</u> | | | | |
| Administrative activities | \$ 215,269 | \$ 130,574 | \$ (84,695) | |
| Administrative appeal | 3,566 | — | (3,566) | |
| Interrogation | 401,220 | 68,787 | (332,433) | |
| Adverse comment | 129,833 | 23,725 | (106,108) | |
| Subtotal | 749,888 | 223,086 | (526,802) | |
| Less late filing penalty | (1,000) | (1,000) | — | |
| Total program costs | <u>\$ 748,888</u> | <u>\$ 222,086</u> | <u>\$ (526,802)</u> | |

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Unallowable salaries and benefits

The county claimed unallowable salaries and benefits totaling \$324,521 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,518.

The following table summarizes the audit adjustments by cost component:

| | Claimed Costs | Allowable Costs | Audit Adjustment |
|---------------------------------|-------------------|--------------------|---------------------|
| <u>Salaries and Benefits</u> | | | |
| Administrative Activities: | | | |
| Sheriff's Department | \$ 18,587 | \$ 10,124 | \$ (8,463) |
| Probation Department | 93,584 | 58,094 | (35,490) |
| District Attorney's Office | 18,318 | 18,318 | — |
| Total Administrative Activities | <u>130,489</u> | <u>86,536</u> | <u>(43,953)</u> |
| Administrative Appeals: | | | |
| Sheriff's Department | 1,388 | — | (1,388) |
| Probation Department | 985 | — | (985) |
| District Attorney's Office | — | — | — |
| Total Administrative Appeals | <u>2,373</u> | <u>—</u> | <u>(2,373)</u> |
| Interrogation: | | | |
| Sheriff's Department | 71,506 | 10,156 | (61,350) |
| Probation Department | 162,587 | 32,351 | (130,236) |
| District Attorney's Office | 18,880 | 2,530 | (16,350) |
| Total Interrogation | <u>252,973</u> | <u>45,037</u> | <u>(207,936)</u> |
| Adverse Comment: | | | |
| Sheriff's Department | 54,680 | 11,389 | (43,291) |
| Probation Department | 31,741 | 5,633 | (26,108) |
| District Attorney's Office | 1,119 | 259 | (860) |
| Total Adverse Comment | <u>87,540</u> | <u>17,281</u> | <u>(70,259)</u> |
| Total salaries and benefits | 473,375 | 148,854 | (324,521) |
| Related indirect costs | 271,223 | 86,705 | (184,518) |
| Total | <u>\$ 744,598</u> | <u>\$ 235,559</u> | <u>\$ (509,039)</u> |
| <u>Recap by Department</u> | | | |
| Sheriff's Department | \$ 198,910 | \$ 42,901 | \$ (156,009) |
| Probation Department | 498,045 | 166,384 | (331,661) |
| District Attorney's Office | 47,643 | 26,274 | (21,369) |
| Total | <u>\$ 744,598</u> | <u>\$ 235,559</u> | <u>\$ (509,039)</u> |

For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.

Administrative Activities

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$43,953 was unallowable (\$8,463 by the Sheriff's Department, and \$35,490 by the Probation Department) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,114.

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- Updating POBOR case records (FY 2005-06).
- Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Preparing the file.
- Logging initial case information into the system and assign the case.
- Interviewing the complainants.

Probation Department

The Probation Department claimed the following reimbursable activities:

- Reviewing and updating internal policies and procedures relating to POBOR.
- Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation

Budgeting implications
Juvenile Justice Reforms
Discrimination issues
Electronic research
First Amendment related conduct
Preparing investigations reports
Key mistakes in workplace investigations
Assessing credibility
Types of lawsuits
Representation and indemnification
Supervisory liability of failure to train
Minimizing exposure to liability

The department also claimed the following activities that are not reimbursable (FY 2004-05):

- Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.
- Visiting other IA units during the establishment of the IA unit at the Probation Department.
- Conducting interviews for IA Management Analyst position.
- Reviewing the progress of development of the IA database.
- Reviewing complaints, response letters, Merit System Rules, and assigning cases.
- Reviewing training schedule for the unit.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- Updating/maintaining POBOR case records.
- Training for Internal Affairs staff (FY 2003-04).
- Develop internal policies and procedures (FY 2003-04).

The District Attorney's Office did not claim any ineligible activities in this category.

Administrative Appeals

For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.

The parameters and guidelines, section IVB(2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

Sheriff's Department

Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process. Subsequently, claimed activities were unallowable for reimbursement.

Probation Department

All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.

District Attorney's Office

The District Attorney's Office did not claim any costs under this cost component.

Interrogation

For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.

The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

Tape recording the interrogation when the peace officer employee records the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- Providing Interrogation Notice and/or Statement of Allegations to the officer.
- Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).
- Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Gathering reports and reviewing complaints and evidence as part of investigating the allegations.
- Investigation time.
- Preparing questions for the interviews.
- Interviewing witnesses during normal working hours (investigators' time).
- Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).

Probation Department

The Probation Department claimed the following reimbursable activities:

- Providing administrative notice to the accused officer regarding the nature of allegations
- Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).

However, the department claimed the following activities that are not reimbursable:

- Gathering reports, log sheets, and evidence.
- Reviewing complaints, reports, and evidence as part of investigating the allegations.
- Interviewing witnesses, both civilian and officers (investigators' time).
- Traveling to interview witnesses.
- Transcribing witness tapes (witnesses do not receive copies of their interviews.)
- Reviewing tapes and making corrections.
- Preparing interview questions.
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).

District Attorney's Office

The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.

However, the District Attorney's Office claimed the following activities that are not reimbursable:

- Gathering reports, log sheets, etc.
- Reviewing complaints, reports, and evidence as part of investigating the allegations.
- Preparing interview questions.
- Interviewing witnesses during normal working hours (investigators' time).
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).
- Preparing a summary report of the agency complaint as part of the case file preparation.
- Reviewing interview tapes.

Adverse Comment

For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits (\$54,680 by the Sheriff's Department, \$31,741 by the Probation Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's

Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment), allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.

Sheriff's Department

The Sheriff's Department claimed the following activities that are reimbursable:

- Preparing and serving an Administrative Notice of Allegations.
- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the department claimed the following activities that are not reimbursable:

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).
- Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.
- Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.
- Preparing interview questions.

Probation Department

The Probation Department claimed the following reimbursable activities:

- Preparing and serving the Final Disciplinary Order (adverse comment notice).
- Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).
- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the department claimed the following activities that are not reimbursable:

- Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.
- Preparing the final case report.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.

(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)

The following table summarizes the overstated costs by fiscal year:

| Cost Category | Fiscal Year | | | Total |
|----------------------------|---------------------|---------------------|---------------------|---------------------|
| | 2003-04 | 2004-05 | 2005-06 | |
| Salaries and benefits: | | | | |
| Sheriff's Department | \$ (36,003) | \$ (39,709) | \$ (38,780) | \$ (114,492) |
| Probation Department | (32,644) | (52,500) | (107,675) | (192,819) |
| District Attorney's Office | (13,877) | (1,396) | (3,690) | (18,963) |
| Subtotal | (82,524) | (93,605) | (150,145) | (326,274) |
| Related indirect costs | (35,831) | (55,199) | (93,917) | (184,947) |
| Audit adjustment | <u>\$ (118,355)</u> | <u>\$ (148,804)</u> | <u>\$ (244,062)</u> | <u>\$ (511,221)</u> |

The program's parameters and guidelines, adopted by CSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.

The parameters and guidelines, section IV (Reimbursable Activities), outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

SCO's Comments

The finding and recommendation remains unchanged, except that we have allowed additional costs under the cost component of Administrative Activities for the District's Attorney's Office.

We will address our comments in the same order as they appear in the county's response.

County's Response

Administrative Activities

Sheriff's Department

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

Probation Department

We do not agree with the narrow interpretation given to “due process” of law and the restrictive definition of the activities over and above the duties beyond the due process of law.

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit’s negative approach to training.

District Attorney’s Office

The above comment [audit finding] is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney’s office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

SCO’s Comments**Administrative Activities***Sheriff’s Department*

The county’s response to this finding is vague. The county implies that unallowable activities described in the audit report relate to language in the revised parameters and guidelines and, as this specific language did not appear in the original parameters and guidelines, these activities must be reimbursable. This contention is not valid. The audit finding is based on the original parameters and guidelines issued on July 27, 2000, and corrected on August 17, 2000. Reimbursable activities include: (1) developing or updating internal policies, procedures, manuals, or other materials pertaining to the conduct of mandated activities; (2) attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and (3) updating the status of POBOR cases. The county did not explain how preparing a case file, logging case information into the county’s system and assigning the case, and interviewing complainants fit into one of the three reimbursable activities described above. These activities have nothing to do with updating internal policies and procedures, training on the requirements of the mandate, or updating the status of POBOR cases.

Probation Department

The parameters and guidelines state that one of the reimbursable activities under the cost component of Administrative Activities includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. The county’s argument suggests that if POBOR requirements were discussed at any time during the course of any training attended by

human resources, law enforcement, or legal counsel, then the entire cost of that training should be reimbursable. We disagree. The language in the parameters and guidelines states that only training that concerns the requirements of the mandate is reimbursable. Accordingly, training that does not concern the requirements of the mandate is not reimbursable.

We reviewed the class outlines and schedules documented by the county for the training hours claimed and allocated allowable training costs based on the percentage of training time devoted to the requirements of the mandate. Accordingly, training hours for topics unrelated to the requirements of the mandated program are unallowable, which is consistent with the language in the adopted parameters and guidelines. We noted all of the specific training topics in the audit report that were deemed unallowable. The county did not provide any additional documentation or information supporting why these topics should be considered allowable training costs under the mandated program.

District Attorney's Office

Based on subsequent discussions with the county, we are satisfied that the county has adequate support for the unallowable training hours mentioned in the draft audit report for training conducted during FY 2003-04. Accordingly, we revised the audit finding to include an additional \$2,182 of allowable costs for FY 2003-04 (\$1,381 for salaries, \$372 for benefits, and \$429 for related indirect costs).

County's Response

Administrative Appeals

Sheriff's Department

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, and administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.

Then when you go to the finding of the audit on page 10, it states – "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of

written reprimand – such as verbal counseling, documented counseling, supervisor comment card. . . This belief is further supported in the Commissions Ps & Gs where it is stated “The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.” There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

SCO’s Comments

Administrative Appeals

Sheriff’s Department

In its response, the county misinterprets the language of the parameters and guidelines when it claims that section IVB(2) “allow[s] reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons: 1. Dismissal, demotion, suspension, reduction in pay, or written reprimand. . . .”

The county did not include the rest of the sentence, replacing it instead with six dots. The first bullet point of section IVB(2) of the parameters and guidelines actually says “dismissal, demotion, suspension, reduction in pay, or written reprimand *received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee’s reputation or ability to find future employment.)* [emphasis added].” The costs incurred by the county for administrative appeal hearings were not claimed for the Chief of Police, so this sentence of the parameters and guidelines does not apply when analyzing the county’s claim.

The county claimed administrative appeal costs for permanent employees. Section IVB(2) of the parameters and guidelines addresses allowable costs for permanent employees under the next three bullet points when it includes:

- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

The county suggests that the last bullet point covers the costs included in its claim by stating “there is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.” The county’s conclusion is incorrect.

The CSM's original statement of decision for the POBOR program, adopted November 30, 1999, states the following on page 11:

Thus, the Commission found that the administrative appeal hearing would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirement of the United States Constitution.

The CSM language is clear, and the costs claimed for the Sheriff's Department under this cost component are unallowable because they are already required by the due process clause.

County's Response

Interrogation

Sheriff's Department

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Probation Department

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with the audit finding.

District Attorney's Office

The county disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

SCO's Comments**Interrogations***Sheriff*

If a peace officer or peace officer witness is interviewed during his or her off-duty time, the county is eligible for reimbursement for the overtime costs incurred. What the auditor stated at the exit conference is consistent with the parameters and guidelines. Furthermore, the audit report states the criteria for reimbursement of costs incurred for the cost component of Interrogations when it quotes the parameters and guidelines section IV(C). In addition, the county's suggestion that the audit findings reflect "recent changes in the POBOR status" is without merit. The parameters and guidelines were originally adopted on July 27, 2000, and corrected on August 17, 2000. No changes have been made to the parameters and guidelines until the CSM adopted amended parameters and guidelines on December 4, 2006. The amended parameters and guidelines apply to claims filed beginning in FY 2006-07. The audit period for this audit extends to FY 2005-06.

Probation Department

Based on the county's written response, it appears that the Probation Department believes that all activities under the cost component of Interrogations must be performed at any time other than during normal working hours in order to be reimbursable. However, the only activity in the parameters and guidelines that contains this caveat regards the reimbursable activity of interrogating a peace officer during his or her off-duty time. The list of unallowable activities cited in the audit report that the department performed fall under due process. Consequently, the CSM did not include these activities as reimbursable activities in the parameters and guidelines.

The only activities that are eligible for reimbursement under the mandated program are those that are spelled out in the adopted parameters and guidelines. If the county disagrees with what the CSM adopted as allowable activities, it can file a proposal with CSM to amend the adopted parameters and guidelines. In the meantime, SCO audits of POBOR claims submitted by the county will rely on the adopted parameters and guidelines as the criteria for reimbursement.

District Attorney's Office

The language contained in the audit report stating that “local agencies were performing these investigative activities before POBAR was enacted” comes directly from page 912 of CSM’s staff analysis of the proposed parameters and guidelines for the POBOR program (Item #10), which was discussed during CSM’s July 27, 2000, hearing. We do not question the amount of work and administrative record-keeping that may be required by claimants to comply with the requirements of the POBOR statutes. However, it is not relevant to the conduct of our audits. Reimbursable costs are based upon activities that the CSM has determined to be allowable within the adopted parameters and guidelines.

County's Response**Adverse Comment***Sheriff's Department*

The first area of denial for reimbursement relates to “Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission’s Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair, and thorough investigation. It is not an issue of whether it is a complaint or not.

Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states – “Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

District Attorney's Office

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

SCO's Comments**Adverse Comment***Sheriff's Department*

Most of the county's response relates to the activity of reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. The county infers that the parameters and guidelines state that determining whether the case rises to the level of an investigation is not reimbursable. However, no language like this appears in the adopted parameters and guidelines. Neither is there any language in the parameters and guidelines stating that this activity is reimbursable. In addition, there is no requirement that reimbursable activities must be performed within the Internal Affairs unit.

As noted in the audit report, the county's activity of reviewing documentation leading to the adverse comment/findings by command staff was eligible for reimbursement. However, we determined that the activity of reviewing the circumstances of a complaint to determine the level of investigation is an investigative activity that is not reimbursable under the mandated program. We also determined that the other three activities cited in the audit report were investigative activities that are unallowable because the activities are not included in the parameters and guidelines as reimbursable activities under the mandated program.

Probation Department

The county did not respond to the Adverse Comment findings for the Probation Department.

District Attorney's Office

The county's comments do not relate to the audit findings contained in the audit report. Rather, the county offers its opinion that the CSM did not allow for more areas of reimbursement to claimants under the adopted statement of decision and parameters and guidelines.

**FINDING 2—
Unallowable
productive hours**

The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.

Ineligible Training Hours

When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:

1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.
2. POST training for law enforcement personnel.
3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.

The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.

Ineligible Break Time

When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.

The following table summarizes the overstated costs by fiscal year:

| Cost Category | Fiscal Year | | | Total |
|----------------------------|-------------------|-------------------|-------------------|--------------------|
| | 2003-04 | 2004-05 | 2005-06 | |
| Salaries and benefits: | | | | |
| Sheriff's Department | \$ (980) | \$ (554) | \$ (1,009) | \$ (2,543) |
| Probation Department | (542) | (4,920) | (2,300) | (7,762) |
| District Attorney's Office | (1,388) | (130) | 23 | (1,495) |
| Subtotal | (2,910) | (5,604) | (3,286) | (11,800) |
| Related indirect costs | (1,000) | (3,905) | (2,047) | (6,952) |
| Audit adjustment | <u>\$ (3,910)</u> | <u>\$ (9,509)</u> | <u>\$ (5,333)</u> | <u>\$ (18,752)</u> |

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record. . .

We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training session that were

conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local government to calculate indirect costs when such costs are "... not readily assignable. . . without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minutes daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has direct all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004, from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004, is reproduced below.

Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide productive hours and have discussed your analysis with my staff and Division of Accounting and reporting staff. The use of countywide productive hours would be acceptable to the State

Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

*If you would like to discuss the above further, please contact me.
Jim Spano*

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy on non-SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations, or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

SCO's Comments

The finding and recommendation remain unchanged.

The SCO concurs that the county may use countywide productive hours to calculate productive hourly rates. The SCO notified Santa Clara County by e-mail dated February 6, 2004, stating in part, "The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandates and nonmandated)."

Training Time

We concur that the county's payroll system was modified in FY 2002-03 to capture actual hours of training. However, we determined that the county's accounting system does not separately identify training time directly charged to program and non-program activities. We have a copy of a county memo dated June 10, 2002, to department payroll, personnel staff, service centers, and timekeepers advising the use of the new training code to report training hours. The memo goes on to state, "the hours that the employee is away from his/her normal productive work is the key for reporting the hours regardless of the type of training or if the training is mandatory or non-mandatory."

However, the county states in its response that "the county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude non-program related training from the pay period data reporting." The county goes on to state that individual county departments maintain records as to whether training reported was program-related or not and that our audit staff should examine this issue. While we noted that the county deducted hours for training codes "ZTT" and "ZXT" during the audit period in its calculation of productive hours (24.35 for FY 2003-04, 26.6 hours for FY 2004-05, and 23.03 hours for FY 2005-06), it has not provided the pertinent details of how these hours were derived. It is not the responsibility of SCO auditors to audit training records of various county departments to determine which training time was used in the county's calculation of its productive hourly rates. Instead, the county should provide the pertinent details of how it calculated the hours deducted from productive hours for each fiscal year of the audit period; it has not yet done so. If the county can subsequently provide adequate documentation that its calculation of deductible productive hours for employee training was related only to non-program-specific training during the audit period, we will revise the audit report as appropriate.

Break Time

The SCO's claiming instructions, which include guidelines for preparing mandated cost claims, do not identify time spent on authorized breaks as deductions (excludable components) from total hours when computing productive hours. The county deducted authorized break time rather than actual break time taken. Limiting daily reporting of hours worked to 7.5 hours does not address instances in which staff works less than eight hours a day, nor does it ensure consistency of application to all programs

(mandates and non-mandates). The county did not adjust for break time directly charged to program activities during the audit period; therefore, the county cannot exclude those hours from productive hours.

The county's response also implies that the county satisfactorily addressed the issues raised in the e-mail from the SCO to Santa Clara County dated February 6, 2004. However, calculating productive hours based on estimated costs is not consistent with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments. If the county chooses to deduct actual break time taken in calculating productive hours, its accounting system must separately identify the actual break time taken. In addition, the county's claim that SCO has accepted "more than 50 claims" using this countywide methodology during the past two years refers to unaudited claims that were processed by SCO for payment. It is erroneous to suggest that this precludes the SCO from taking a finding during the conduct of an actual audit of one or more of these claims.

**FINDING 3—
Understated benefit
rates**

The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

We accept the audit comments and request that the costs be allowed to the extent understated.

SCO's Comments

The county agrees with the finding.

**FINDING 4—
Understated indirect
costs**

The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

Recommendation

We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.

County's Response

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

SCO's Comments

The county agrees with the finding.

**FINDING 5—
Unallowable travel
and training costs**

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA(5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's Response

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

SCO's Comments

Probation Department

The parameters and guidelines state that one of the reimbursable activities under the Administrative Activities cost component includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. Accordingly, training that does not concern the requirements of the mandate is not reimbursable. We allocated allowable training costs based on the percentage of training time devoted to the requirements of the mandate, as noted above within Finding 1. Accordingly, travel costs associated with employee training that is not eligible for reimbursement is also unallowable.

OTHER ISSUE— Audit Criteria

County's Response

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps and Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB 90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

SCO's Comment

The county's comment that the audit was based on the revised parameters and guidelines for the POBOR program (adopted by CSM on December 4, 2006) appears frequently in its response to the draft report. During the audit exit conference, the county's SB 90 coordinator asked us several times whether the audit was based on the original parameters and guidelines or on the revised parameters and guidelines adopted on

December 4, 2006. On each occasion, We responded that the audit was based on our understanding of the original parameters and guidelines adopted by CSM and that the revised parameters and guidelines apply to claims filed for FY 2006-07 and subsequent years.

Any references to the revised parameters and guidelines adopted on December 4, 2006, made during the exit meeting or in any discussion during the audit process were made solely to point out that reimbursable and non-reimbursable activities of the mandated program are spelled out more clearly in the revised parameters and guidelines. Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive actions protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines. In addition, our understanding of allowable and unallowable activities per the original parameters and guidelines did not change as a result of the CSM amending them on December 4, 2006.

The draft audit report and this final report state that the audit was based on parameters and guidelines adopted by the CSM on July 27, 2000, and corrected on August 17, 2000. The language in the audit report and in the SCO response to the county's comments emanates either from the original parameters and guidelines, the original statement of decision, or from the CSM staff analysis of the originally proposed parameters and guidelines for this mandate program.

The county's statement that the CSM had to reconsider and reissue amended parameters and guidelines due to different interpretations of claimable costs is not correct. The CSM was *required* to review its original statement of decision for the POBOR program, adopted in 1999, pursuant to AB 138 (Statutes 2005, chapter 72, section 6) to clarify whether the subject legislation for the POBOR program imposed a mandate consistent with the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4th 859 and other applicable court decisions. Accordingly, CSM adopted its statement of decision upon reconsideration on May 1, 2006.

Adopting revised parameters and guidelines based on reconsideration of its original statement of decision is consistent with the CSM's normal procedures. In this instance, the CSM also directed its staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology, pursuant to Government Code section 17519.5, for inclusion in the revised parameters and guidelines. State agencies and interested parties proposed changes to the reimbursable activities and various reasonable reimbursement methodologies; all proposed changes were considered by CSM staff prior to adoption of the revised parameters and guidelines on December 4, 2006.

**Attachment—
County's Response to
Draft Audit Report**

County of Santa Clara

Finance Agency
Controller-Treasurer Department

County Government Center
70 W. Hedding Street, East Wing, 2nd Floor
San Jose, California 95110-1705
(408) 299-5200 FAX (408) 289-8629



DATE: March 11, 2008

TO: Jim L. Spano
Chief, Compliance Audits Bureau,
State Controller's Office, Division of audits,
Post Office Box 942850,
Sacramento, CA 94250-5874

FROM: Irene Lui
Divisional Manager,
Cost management and claims

RE: Response to POBOR Draft audit report

Dear Mr. Spano,

Thank you for sending us the draft audit report regarding our claim for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976) for the period from July 1, 2003 through June 30, 2006

We attach our responses to your audit findings in the order they were presented on your draft report. Except the matters that we have specifically accepted, we disagree to all other findings; the attached detailed response addresses our concerns from respective claiming departments. Please review our comments and make appropriate adjustments for the draft report accordingly.

Your draft report attempts to disallow \$511,221 out of our claimed amount of \$744,598 which is about 69%. This high percentage of disallowance was mainly contributed by the difference in interpretation of legal provisions and Ps and Gs between the state auditors and the local governments. Your strict and narrow interpretation of Ps and Gs is, in fact, a relatively new phenomenon that has not been adhered to by any local agencies, and will only lead to prolonged litigation that hurts both the State and local agencies.

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss
County Executive: Peter Kutas, Jr.

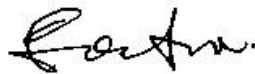
Noting this situation, we along with the CSAC has tried to negotiate a balanced settlement which is still pending in spite of our efforts for the past few years.

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps & Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

We appreciate the opportunity to review and comment upon this audit. We would like to meet with you and your staff to explain our various points, and to seek a reasonable settlement of the claimed costs before we explore other alternatives available to us. Please contact Ram Venkatesan, the County SB 90 Coordinator, at (408) 299-5210 if you have questions.

Regards,



Irene Lui
Divisional manager

Attachment: Detailed response to your draft audit findings

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kruss
County Executive: Peter Kutas, Jr.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

FINDING 1—Unallowable salaries and benefits

The county claimed unallowable salaries and benefits costs totaling \$326,274 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,947.

The following table summarizes the audit adjustments by cost component:

| | Claimed Costs | Allowable Costs | Audit Adjustme nt |
|--|------------------|--------------------|-------------------------|
| <u>Salaries and Benefits</u> | | | |
| <u>Administrative Activities:</u> | | | |
| Sheriff's Department | \$ 18,587 | \$ 10,124 | \$ (8,463) |
| Probation Department | 93,584 | 58,094 | (35,490) |
| District Attorney's Office | 18,318 | 16,565 | (1,753) |
| Total Administrative Activities | 130,489 | 84,783 | (45,706) |
| <u>Administrative Appeals:</u> | | | |
| Sheriff's Department | 1,388 | — | (1,388) |
| Probation Department | 985 | — | (985) |
| District Attorney's Office | — | — | — |
| Total Administrative Appeals | 2,373 | — | (2,373) |
| <u>Interrogation:</u> | | | |
| Sheriff's Department | 71,506 | 10,156 | (61,350) |
| Probation Department | 162,587 | 32,351 | (130,236) |
| District Attorney's Office | 18,860 | 2,530 | (16,350) |
| Total Interrogation | 252,973 | 45,037 | (207,936) |
| <u>Adverse Comment:</u> | | | |
| Sheriff's Department | 54,680 | 11,389 | (43,291) |
| Probation Department | 31,741 | 5,633 | (26,108) |
| District Attorney's Office | 1,119 | 259 | (860) |
| Total Adverse Comment | 87,540 | 17,281 | (70,259) |
| Total salaries and benefits | 473,375 | 147,101 | (326,274) |
| Related indirect costs | 271,223 | 86,276 | (184,947) |
| Total | \$744,598 | \$233,377 | \$ (511,221) |
| <u>Recap by Department</u> | | | |
| <u>Sheriff's Department</u> | | | |
| | \$198,910 | \$ 42,901 | \$ (156,009) |
| <u>Probation Department</u> | | | |
| | 498,045 | 166,384 | (331,661) |
| <u>District Attorney's Office</u> | | | |
| | 47,643 | 24,092 | (23,551) |
| Total | \$744,598 | \$233,377 | \$ (511,221) |

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For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.

County's response

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits costs (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$45,706 was unallowable (\$8,463 by the Sheriff's Department, \$35,490 by the Probation Department, and \$1,753 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,543.

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- *Updating POBOR case records (FY 2005-06).*
- *Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).*

However, the department claimed the following activities that are not reimbursable:

- *Preparing the file.*
- *Logging initial case information into the system and*

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assign the case.

- *Interviewing the complainants.*

County's response (Sheriff)

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Reviewing and updating internal policies and procedures relating to POBOR.*

County's response (Probation)

We do not agree with the narrow interpretation given to "due process" of law and the restrictive definition of the activities over and above the duties beyond the due process of law

- *Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:*

- Labor relations*
- Unionized vs. non-unionized employees*
- Private and public employees*
- Handling sexual harassment issues*
- Confidentiality issues*
- Investigation errors*
- Ethical issues in probation*
- Budgeting implications*
- Juvenile Justice Reforms*
- Discrimination issues*

County of Santa Clara
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Electronic research
First Amendment related conduct
Preparing investigations reports
Key mistakes in workplace investigations
Assessing credibility
Types of lawsuits
Representation and indemnification
Supervisory liability of failure to train
Minimizing exposure to liability

The department also claimed the following activities that are not reimbursable (FY 2004-05):

- *Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.*
- *Visiting other IA units during the establishment of the IA unit at the Probation Department.*
- *Conducting interviews for IA Management Analyst position.*
- *Reviewing the progress of development of the IA database.*
- *Reviewing complaints, response letters, Merit System Rules, and assigning cases.*
- *Reviewing training schedule for the unit.*

County's response (Probation)

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit's negative approach to training.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- *Updating/maintaining POBOR case records.*
- *Training for Internal Affairs staff (FY 2003-04) (hours were adjusted for one employee, whose training records did not reflect attendance at the claimed training class).*
- *Develop internal policies and procedures (FY 2003-04).*

The District Attorney's Office did not claim any ineligible activities in this category.

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County's response (DA)

The above comment is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney's office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all the six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

Administrative Appeals

For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits costs (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.

The parameters and guidelines, section IVB (2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical

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services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher level of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

Sheriff's Department

Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

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Subsequently, claimed activities were unallowable for reimbursement.

County's response (Sheriff)

Administrative Appeal

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.....

Then when you go to the finding of the audit on page 10, it states – "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of written reprimand – such as verbal counseling, documented counseling, supervisor comment card... This belief is further supported in the Commissions Ps & Gs where it is stated "The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee." There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

Probation Department

All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.

District Attorney's Office

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The District Attorney's Office did not claim any costs under this cost component.

Interrogation

For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits costs (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.

The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures is absolutely essential.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

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Tape recording the interrogation when the peace officer employee records the interrogation is an essential part of the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers is required.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- *Providing Interrogation Notice and/or Statement of Allegations to the officer.*
- *Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).*
- *Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).*

However, the department claimed the following activities that are not reimbursable:

- *Gathering reports and reviewing complaints and evidence as part of investigating the allegations.*
- *Investigation time.*
- *Preparing questions for the interviews.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

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County Response (Sheriff)

Interrogation

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Providing administrative notice to the accused officer regarding the nature of allegations*
- *Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).*

However, the department claimed the following activities that are not reimbursable:

- *Gathering reports, log sheets, and evidence.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Interviewing witnesses, both civilian and officers (investigators' time).*
- *Traveling to interview witnesses.*
- *Transcribing witness tapes (witnesses do not receive copies of their interviews.)*
- *Reviewing tapes and making corrections.*
- *Preparing interview questions.*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

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County's response (Probation)

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with audit finding.

District Attorney's Office

The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.

However, the District Attorney's Office claimed the following activities that are not reimbursable:

- *Gathering reports, log sheets, etc.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Preparing interview questions.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*
- *Preparing a summary report of the agency complaint as part of the case file preparation.*
- *Reviewing interview tapes.*

County's Response (DA)

The County disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

Adverse Comment

For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits costs (\$54,680 by the Sheriff's Department, \$31,741 by the Probation

County of Santa Clara
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Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment); allow some or all of the following four activities upon receipt of an Adverse Comment:

- *Providing notice of the adverse comment;*
- *Providing an opportunity to review and sign the adverse comment;*
- *Providing an opportunity to respond to the adverse comment within 30 days; and*
- *Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.*

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.

Sheriff's Department

The Sheriff's Department claimed the following activities that are reimbursable:

- *Preparing and serving an Administrative Notice of Allegations.*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the department claimed the following activities that are not reimbursable:

- *Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the*

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case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).

- *Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.*
- *Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.*
- *Preparing interview questions.*

County's response (Sheriff)

Adverse Comment

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair and thorough investigation. It is not an issue of whether it is a complaint or not.

Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Preparing and serving the Final Disciplinary Order*

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(adverse comment notice).

- *Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the department claimed the following activities that are not reimbursable:

- *Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.*
- *Preparing the final case report.*

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.

(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)

County's response (DA)

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

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The following table summarizes the overstated costs by fiscal year:

| Cost Category | Fiscal Year | | | Total |
|------------------------|-------------|-------------|-------------|-----------|
| | 2003-04 | 2004-05 | 2005-06 | |
| Salaries and benefits: | | | | |
| Sheriff's Department | | | | \$ |
| | \$ (36,003) | \$ (39,709) | \$ (38,780) | (114,492) |
| Probation | | | | |
| Department | (32,644) | (52,500) | (107,675) | (192,819) |
| District Attorney's | | | | |
| Office | (13,877) | (1,396) | (3,690) | (18,963) |
| Subtotal | (82,524) | (93,605) | (150,145) | (326,274) |
| Related indirect costs | (35,831) | (55,199) | (93,917) | (184,947) |
| Audit adjustment | \$ | \$ | \$ | \$ |
| | (118,355) | (148,804) | (244,062) | (511,221) |

The program's parameters and guidelines, adopted by CSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.

The parameters and guidelines section IV (Reimbursable Activities); outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

FINDING 2—Unallowable productive hours

The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs

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totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.

Ineligible Training Hours

When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:

- 1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.*
- 2. POST training for law enforcement personnel.*
- 3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.*

The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.

Ineligible Break Time

When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per

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bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.

The following table summarizes the overstated costs by fiscal year:

| Cost Category | Fiscal Year | | | Total |
|----------------------------|-------------------|-------------------|-------------------|-----------------|
| | 2003-04 | 2004-05 | 2005-06 | |
| Salaries and benefits: | | | | |
| Sheriff's Department | \$ (980) | \$ (554) | \$ (1,009) | \$ (2,543) |
| Probation Department | (542) | (4,920) | (2,300) | (7,762) |
| District Attorney's Office | (1,388) | (130) | 23 | (1,495) |
| Subtotal | (2,910) | (5,604) | (3,286) | (11,800) |
| Related indirect costs | (1,000) | (3,905) | (2,047) | (6,952) |
| Audit adjustment | | | | \$ |
| | <u>\$ (3,910)</u> | <u>\$ (9,509)</u> | <u>\$ (5,333)</u> | <u>(18,752)</u> |

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's response (Finance)

FINDING 2 – Unallowable productive hours

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record...

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We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training sessions that were conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local governments to calculate indirect costs when such costs are "... not readily assignable...without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minute daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has directed all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the

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effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served.. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004 from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of a countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004 is reproduced below.

Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide Productive hours and have discussed your analysis with my staff and Division Of Accounting and reporting staff. The use of countywide productive hours Would be acceptable to the State Controller's Office provided all employee Classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time Spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

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If you would like to discuss the above further, please contact me.

Jim Spano

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy for non-SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

FINDING 3—Understated benefit rates

The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

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The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's response (probation)

We accept the audit comments and request that the costs be allowed to the extent understated.

FINDING 4—understated indirect costs

The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

Recommendation

We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.

County's response (Probation)

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

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FINDING 5—Unallowable travel and training costs

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA (5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's response (probation)

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

General response

We thank the audit team for their speedy audit work and the discussions they had with us. However we felt highly disappointed with their unwillingness to go through the program implementation constraints and the background of the procedures followed in the county in this program. Please also see our cover letter to which this response is attached.

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>